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11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13 BROOKE CARDOZA, an individual; CODY
14 C. HANCOCK, an individual; each on behalf
of himself/herself, and on behalf of all others
similarly situated,

15 Plaintiffs,

16 vs.

17 BLOOMIN' BRANDS, INC., a Delaware
18 Corporation; OSI RESTAURANT
19 PARTNERS, LLC, a Florida Limited
Liability Company; OUTBACK
20 STEAKHOUSE OF FLORIDA, LLC, a
Florida Limited Liability Company; OS
21 RESTAURANT SERVICES, LLC, a Florida
Limited Liability Company; and DOES 5
22 through 100, Inclusive,

23 Defendants.
24

CASE NO.:

**COMPLAINT - FLSA COLLECTIVE
ACTION**

**** JURY TRIAL DEMANDED**

25
26 Plaintiffs Brooke Cardoza and Cody C. Hancock (herein "Plaintiffs") through undersigned
27 counsel, on behalf of themselves and all persons similarly situated, allege as follows:
28

INTRODUCTION

1
2 1. This lawsuit is a class and collective action brought by Plaintiffs, on behalf of
3 themselves and all similarly situated non-exempt hourly employees of Bloomin' Brands, Inc., OSI
4 Restaurant Partners, LLC, Outback Steakhouse of Florida, LLC, and OS Restaurants Services,
5 LLC, and DOES 5 through 100 (herein collectively "Defendants"), jointly and severally, to
6 recover for Defendants' willful violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §
7 201, *et seq.* The class of non-exempt hourly employees of Defendants is referred to herein as the
8 "Class."

9 2. This lawsuit is a result of Defendants' failure to pay Plaintiffs and other similarly-
10 situated employees who are members of the Class defined herein all earned wages.

11 3. Plaintiffs bring this action as a collective action pursuant to the FLSA to recover
12 unpaid minimum and overtime wages. Plaintiffs, as a Class, are current and former employees of
13 Defendants, who worked or are working as hourly employees including but not limited to host,
14 bartender, server, head wait server, line cook, prep cook, take-away person, trainer, dishwasher,
15 and busser.

16 4. All the aforementioned employee types are hourly positions.¹ All the
17 aforementioned hourly positions are non-exempt.

18 5. Specifically, Plaintiffs complain that Defendants violated the FLSA by requiring
19 their hourly workers to appear for work and work at times for which they were not compensated.
20 Plaintiffs bring this action as a nation-wide collective action pursuant to 29 U.S.C. § 216(b).

21 6. Due to Defendants' uniform policies and practices, Plaintiffs and the members of
22 the Class have experienced the following and were:

- 23 i. required to appear and start work ten to fifteen minutes prior to scheduled shifts
24 (referred to as "Outback Time");
25 ii. prohibited from clocking in; and/or
26 iii. required not to clock in for the full amount of hours they worked and thus were

27
28 ¹ <http://www.outback.com/our-company/careers/hourly> (last visited October 4, 2013).

1 not paid for the hours they worked; and/or

2 iv. prohibited from taking mandated, paid and unpaid breaks; and/or

3 v. prohibited from receiving pay for mandated training and testing; and/or

4 vi. prohibited from receiving proper pay for training others; and/or

5 vii. prohibited from receiving pay for mandated company meeting and events.

6 This was accomplished by requiring employees to be present ten to fifteen minutes prior to
 7 a scheduled shift on “Outback Time,” by refusing to allow employees to take paid and unpaid
 8 breaks, by requiring that the employees perform prescribed work before clocking in, by refusing to
 9 pay employees for time spent in mandatory training sessions online, by refusing to pay training
 10 employees compensation as agreed upon, and by refusing to allow lunch and dinner breaks and
 11 forcing employees to work while they ate. Defendants furthermore, in failing to provide breaks,
 12 failed to provide reasonable break time for Plaintiff Cardoza and similarly situated employees to
 13 express breast milk for nursing children and failed to provide a place, other than a bathroom, that
 14 is shielded from view and free from intrusion from coworkers and the public.

15 7. Plaintiffs and the Class members presently work or have worked for periods of time
 16 for which they have not been paid at all. Plaintiffs and the Class members presently work or have
 17 worked in excess of forty (40) hours in individual work weeks, but were not paid at a rate of one
 18 and one-half (1.5) times their regular rate of pay or minimum wage as required by the FLSA, 29
 19 U.S.C. §§ 206-207.

20 8. Plaintiffs allege on behalf of the Class that their unpaid wage claims include: (i)
 21 unpaid wages from Defendants for hours worked for which they did not receive wages; (ii) unpaid
 22 wages from Defendants for overtime work for which they did not receive overtime premium pay;
 23 (iii) unpaid wages from Defendants for mandatory paid breaks that were never permitted; and (iv)
 24 unpaid wages from Defendants for mandatory training.

25 9. The individuals Plaintiffs seek to represent in this action include current and former
 26 non-exempt hourly employees that worked for Defendants at an “Outback Steakhouse” Restaurant
 27 in the United States, at any time in the past three years. Plaintiffs contend that Defendants’
 28

1 improper timekeeping and pay policies and practices resulted in the failure to properly compensate
2 their hourly workers with minimum pay and overtime pay as required under applicable federal
3 law.

4 10. Plaintiffs seek a declaration that their rights, and the rights of other Class members,
5 were violated, an award of unpaid wages, an award of liquidated damages, and an award of
6 attorneys' fees and costs to make them whole for damages suffered.

7 11. Plaintiffs also bring this action on behalf of themselves and all other similarly
8 situated employees of Defendants who have experienced or are potentially subject to retaliation in
9 violation of 29 U.S.C. § 215(a)(3) for participating in this lawsuit.

10 **PARTIES**

11 12. Plaintiff Brooke Cardoza is a citizen of the State of Nevada who is currently
12 employed as a server by the Defendants at an Outback Steakhouse Restaurant in Clark County,
13 Nevada. During the past thirteen years, approximately, Plaintiff Cardoza has worked for
14 Defendants at various and multiple Outback Steakhouse restaurants and held various non-exempt
15 hourly positions.

16 13. Plaintiff Cody C. Hancock is a citizen of the State of Nevada who is employed as a
17 server by the Defendants at an Outback Steakhouse Restaurant in Clark County, Nevada. During
18 the past ten years, approximately, Plaintiff Hancock has worked for Defendants at various and
19 multiple Outback Steakhouse restaurants and held various non-exempt hourly positions.

20 14. Defendant Bloomin' Brands Inc. ("Bloomin'" or "Bloomin' Brands"), an entity
21 incorporated in Delaware, is one of the world's largest casual dining companies with
22 approximately 91,000 domestic Team Members and more than 1,400 restaurants throughout 48
23 states, Puerto Rico, Guam, and 20 countries.² One of Bloomin' Brands restaurant brands is
24 Outback Steakhouse, an Australian themed casual dining restaurant, which claims to be committed
25 to consistently delivering high-quality food and service, generous portions at a down under value
26

27 _____
28 ² <http://www.bloominbrands.com/ourcompany/> (last visited October 4, 2013).

1 in a fun, casual atmosphere suggestive of the Australian Outback.³ Further, Bloomin' Brands, Inc.
 2 is a company of restaurants that owns and operates Outback Steakhouse, Carrabba's Italian Grill,
 3 Bonefish Grill, Roy's Restaurant, and Fleming's Prime Steakhouse & Wine Bar.⁴ Bloomin'
 4 Brands owns an interest in over 278 subsidiary entities, including OSI Restaurant Partners, LLC,
 5 which owns Outback Steakhouse of Florida, LLC, which in turn owns OS Restaurant Services,
 6 LLC.⁵

7 15. Defendant OSI Restaurant Partners, LLC ("OSI") is a limited liability company
 8 organized under the laws of the State of Florida, and is the managing member of Outback
 9 Steakhouse of Florida, LLC and conducts business directly in the State of Nevada and through its
 10 subsidiaries, in the State of Nevada.⁶

11 16. Defendant Outback Steakhouse of Florida, LLC ("Outback") is a limited liability
 12 company organized under the laws of the State of Florida, and has conducted business directly as a
 13 foreign limited liability company in the State of Nevada and through its subsidiaries, in the State
 14 of Nevada.⁷ Defendant owns and operates Outback Steakhouse restaurants for Bloomin' Brands.
 15 Defendant Outback touts that "[t]his is who we are and it's the foundation for our culture – we'll
 16 break the rules to do what it takes to make sure we deliver a dining experience that's just right
 17 each and every time."⁸ As of June 2013, Outback was associated with 769 restaurants across the
 18 United States.⁹

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 20 ³ <http://www.bloominbrands.com/ourcompany/ourbrands.aspx> (last visited October 4, 2013).

21 ⁴ <http://www.outback.com/our-company/about-us> (last visited October 4, 2013).

22 ⁵ <http://investors.bloominbrands.com/secfiling.cfm?filingID=1546417-13-38&CIK=1546417> (last
 23 visited October 4, 2013).

24 ⁶ <http://nvsos.gov/sosentitysearch/CorpDetails.aspx?lx8nvq=YaMsDFon3pzJS8POXBB%252bRQ%253d%253d&nt7=0> (last visited October 4, 2013).

25 ⁷ *Id.*

26 ⁸ <http://www.outback.com/our-company/press-room/2013/09/03/outback-steakhouse-breaks-the-rules-with-new-no-rules-just-right-campaign> (last visited October 4, 2013).

27 ⁹ http://files.shareholder.com/downloads/AMDA-ZYBGR/2705767174x0x684774/DEEDC814-2ECC-4C49-9B22-FB1A505EADF7/Bloomin_Brands_Q2.pdf (last visited October 4, 2013).

1 employees (i) to be paid for all hours worked, (ii) to be paid a minimum wage, and (iii) to be paid
2 premium overtime compensation for all hours worked in excess of forty (40) hours per week,
3 unless such employees are shown to be exempt from such protections.

4 25. In violation of these basic protections, Plaintiffs and the members of the Class were
5 (i) not lawfully paid for all hours worked, including but not limited to all time above and beyond
6 forty (40) hours in each work week, (ii) not paid the applicable minimum wage, and (iii) not paid
7 premium overtime compensation for all hours worked in excess of forty (40) hours per week.

8 26. Defendants are the employers and/or joint employers of Plaintiffs and the members
9 of the Class within the meaning of the FLSA.

10 27. Defendants operate and/or control, directly and/or through Bloomin's sole
11 ownership of its subsidiaries, the Outback Steakhouse restaurants at which Plaintiffs and the
12 members of the Class work and/or worked (collectively, "the Restaurants").

13 **A. Bloomin' Centrally Controls the Restaurants**

14 28. Bloomin' is a Fortune 1000 company which generated revenue from restaurant
15 operations in excess of \$3.8 billion in 2011, and \$3.9 billion in 2012.

16 29. Bloomin', through its wholly-owned subsidiaries named above, owns and operates
17 approximately 1,500 restaurants under brand names including Outback Steakhouse, Carraba's
18 Italian Grill, Bonefish Grill, Flemings Prime Steak & Wine Bar, Roy's Restaurant, and Outback
19 Steakhouse International.

20 30. Over 90% of Bloomin's restaurants in the United States are owned by Bloomin' or
21 its wholly-owned subsidiaries, as opposed to franchisees, and Bloomin' does not have any
22 restaurants under franchise in Nevada.

23 31. Bloomin' and its subsidiaries, including OSI, Outback Steakhouse, and OS, occupy
24 the same principal place of business: 2202 N. West Shore Blvd, Suite 500, Tampa, Florida 33607-
25 5761.

26 32. Each of the corporate Defendants has at least one officer or director or manager or
27 membership interest in common, and most of the Defendants have multiple shared officers,
28

1 managers, and/or directors. OSI is the managing member of Outback Steakhouse, which is the
2 managing member of OS. OSI lists Chris Sullivan, Andrew Balson, Michael J. Chu, Elizabeth A.
3 Smith, and Mark Nunnelly as managers and Joseph Kadow as vice president.¹⁰ Bloomin' lists
4 Joseph Kadow as vice president, Elizabeth Smith as CEO and director, Andrew Balson, Mark
5 Nunnelly, Chris Sullivan, and Michael J. Chu as directors.¹¹

6 33. The Restaurants are designed exclusively by Bloomin', including not only the
7 Restaurants' layout and decor, but also the music played in the restaurant. Upon information and
8 belief, the Restaurants rarely, if ever, deviate from Bloomin's decor and music selections.

9 34. Bloomin' maintains control, oversight, and direction over the operation of the
10 Restaurants, including their employment and/or labor practices.

11 35. The Restaurants are directly managed and controlled by Bloomin' to make sure that
12 they strictly conform to Bloomin's policies and practices.

13 36. The Restaurants are visited regularly by all levels of supervision of Bloomin' to
14 help ensure that the Restaurants strictly adhere to all aspects of Bloomin's standards.

15 37. Each of the Restaurants is operated under detailed operations manuals issued by
16 Bloomin' that cover all aspects of restaurant operations.

17 38. Each of the Restaurants is operated under the brand name, "Outback Steakhouse,"
18 and offers a menu which is created exclusively by Bloomin'. Upon information and belief, none of
19 the Restaurants deviate from Bloomin's menus.

20 39. Applicants for hourly positions at Outback Steakhouses are diverted to Bloomin's
21 website and online application forms.¹²

22 40. Bloomin' implements centralized training for managers in each of the Restaurants.

24 ¹⁰ [http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail/EntityName/forl-](http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail/EntityName/forl-m08000000872-8300a057-c0e5-41a8-b2db-03ec0cb34ec3/OSI%20Rest/Page1)
25 [m08000000872-8300a057-c0e5-41a8-b2db-03ec0cb34ec3/OSI%20Rest/Page1](http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail/EntityName/forl-m08000000872-8300a057-c0e5-41a8-b2db-03ec0cb34ec3/OSI%20Rest/Page1) (last visited October 4,
2013).

26 ¹¹ [http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail/EntityName/forp-](http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail/EntityName/forp-f08000004904-fd0a9b7f-bda3-4592-aa72-1fd40e3ad19d/Bloomin/Page1)
27 [f08000004904-fd0a9b7f-bda3-4592-aa72-1fd40e3ad19d/Bloomin/Page1](http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail/EntityName/forp-f08000004904-fd0a9b7f-bda3-4592-aa72-1fd40e3ad19d/Bloomin/Page1) (last visited October 4, 2013).

28 ¹² <https://www.bloominbrandscareers.com/systems/AssessCore/Survey/TestBattery.aspx> (last visited
October 4, 2013).

1 41. Bloomin' issues similar standardized training manuals and handbooks for each of
2 the Restaurants operating under the Outback Steakhouse name.

3 42. Founded in 1988, Bloomin' Brands is the parent company that owns and operates
4 Outback Steakhouse, Carrabba's Italian Grill, Bonefish Grill, Roy's Restaurant, and Fleming's
5 Prime Steakhouse & Wine Bar.

6 43. All of the employees who work at the Restaurants are required to attend Bloomin'
7 Brands, Inc. University, previously known as OSI University, (collectively herein "BBI
8 University") for mandatory online courses.

9 44. BBI University's online courses are setup to be accessible from home and/or
10 personal devices of the workers.

11 **B. Defendants' Uniform and Unlawful Wage Practices**

12 45. Bloomin' (i) creates uniform wage policies and practices for use at the Restaurants,
13 (ii) controls the Restaurants by imposing its uniform wage policies and practices at the
14 Restaurants, and (iii) maintains a centralized human resources function which oversees the
15 implementation of Bloomin's wage policies and practices at the Restaurants.

16 46. Outback Steakhouse and OS each operate Restaurant locations which implement
17 Bloomin's uniform policies and practices. Bloomin' requires and monitors compliance with its
18 policies.

19 47. Bloomin' maintains a steadfast, single-minded focus on minimizing its labor costs.
20 Two fundamental foci of this policy—ingrained in its managers—are the need to have as many
21 tasks as possible performed by as few employees as possible, and a strict restraint on the payment
22 of overtime wages.

23 **1. Off-the-Clock Work and "Outback Time"**

24 48. Bloomin' employs a uniform electronic timekeeping system for tracking and
25 reporting employee hours worked at the Restaurants. The system allows and requires employees to
26 punch in and out for their shifts.

27 49. The Defendants use the system at all of the Restaurants.

1 50. Hours worked by all hourly employees are reported from the Restaurants through
2 the system to Bloomin's centralized human resources function, operated by OS.

3 51. Bloomin' monitors the hours worked at the Restaurants.

4 52. The hours worked by Plaintiffs and the members of the Class were uniformly
5 manipulated by Bloomin' and the operating Defendants to avoid reporting time worked. Plaintiffs
6 and the members of the Class were routinely not paid for time worked, including but not limited to
7 overtime.

8 53. Pursuant to Bloomin's uniform policies, the managers of the Restaurants are
9 responsible for the day-to-day operation of each restaurant.

10 54. Pursuant to Bloomin's uniform policies, the managers of the Restaurants are
11 responsible for ensuring compliance with the operating standards of Bloomin'.

12 55. Pursuant to Bloomin's uniform policies, the managers of the Restaurants are
13 responsible for knowing, understanding, and complying with all of the federal labor and
14 employment laws applicable to their restaurant.

15 56. Pursuant to Bloomin's uniform policies, the managers of the Restaurant have pay
16 plans which link their compensation to their financial success at Bloomin'.

17 57. Pursuant to Bloomin's uniform policies, the managers of the Restaurants have
18 bonuses that contribute significantly to their overall compensation and which are linked, in part, to
19 the total labor hours that employees work.

20 58. Pursuant to Bloomin's uniform policies, the managers of the Restaurants have the
21 authority from Bloomin' to edit and adjust the work hours recorded for employees in the system.

22 59. Pursuant to Bloomin's uniform policies, which were implemented by the
23 Defendants, Plaintiffs and the members of the Class were required and/or permitted to work for
24 the benefit of Bloomin' and the Defendants when they were not contemporaneously logged into
25 the system as present and working.

26 60. Pursuant to Bloomin's uniform policies, which were implemented by the
27 Defendants, Plaintiffs and the members of the Class were required to arrive at work on "Outback
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1 Time,” ten (10) to fifteen (15) minutes prior to the start of their specified times for scheduled work
2 shifts, and were required to perform work before using the electronic system to begin logging
3 hours worked.

4 61. Pursuant to Bloomin’s uniform policies, the Defendants systematically reduced the
5 number of workers scheduled to perform tasks, while not reducing the amount of tasks required,
6 thereby requiring workers to begin their day prior to times when they could “clock-in.”
7 Specifically, workers responsible for preparing the Restaurant for opening each day (i.e.
8 “openers”) were required to work up to two hours prior to opening, but forced to “clock-in” only
9 thirty (30) minutes prior to opening.

10 62. Pursuant to the uniform policies, which were implemented by the Defendants,
11 Plaintiffs and the members of the Class were threatened with losing their jobs if they did not arrive
12 at work on Outback Time.

13 63. Pursuant to the uniform policies, which were implemented by the Defendants,
14 Plaintiffs and the members of the Class were required to work upon arrival on Outback Time.

15 64. Pursuant to Bloomin’s uniform policies, which were implemented by the
16 Defendants, Plaintiffs and the members of the Class could only log into the system during a
17 discrete clock-in interval at the beginning of their shifts: no earlier than five (5) minutes before a
18 scheduled shift. After the clock-in time expired, Plaintiffs and the members of the Class needed to
19 obtain authorization of the store manager to log into the system.

20 65. As a result of the above uniform timekeeping practices, the timekeeping records of
21 Defendants do not reflect the total time worked by Plaintiffs and the members of the Class. The
22 total time worked by Plaintiffs and the members of the Class is substantially understated.
23 Furthermore, the timekeeping records of Defendants do not reflect the fact that Plaintiffs and the
24 members of the Class worked in excess of forty (40) hours per week.

25 66. Bloomin’s uniform timekeeping practices provide managers of the Restaurants with
26 a computer report at the end of a given shift which details when an employee clocked in or out of
27 his or her shift.

1 67. The failure of the records of Defendants to reflect the correct total time worked by
2 Plaintiffs and the members of the Class and the time in excess of forty (40) hours per week is
3 known by Defendants.

4 68. The amount of time for which Plaintiffs and members of the Class are/or were
5 required to work but are not paid is not insubstantial, insignificant, nor de minimus.

6 **2. Paid and Unpaid Breaks**

7 69. Defendants prohibited non-exempt hourly employees from taking mandatory
8 fifteen (15) minute breaks.

9 70. Defendants prohibited non-exempt hourly employees from taking mandatory meal
10 breaks.

11 71. Upon information and belief, Defendants were aware that non-exempt hourly
12 employees were not being provided paid and unpaid breaks as it is reflected in the timekeeping
13 records of Defendants, which is reviewed by Defendants.

14 **3. Incentive Pay for Training Denied**

15 72. Defendants implemented a policy for on-the-job training, wherein an existing
16 seasoned employee ("Trainer") in a non-exempt hourly position would train new employees in the
17 similar position.

18 73. Defendants promised to pay \$1.00 to \$2.00 per hour, in addition to the standard
19 hour rate of pay, as incentive pay for Trainers, during training sessions.

20 74. Defendants in fact refused to pay Trainers the incentive pay for training sessions,
21 but forced employees to train in addition to their existing responsibilities.

22 75. Upon information and belief, Defendants were aware that non-exempt hourly
23 employees were not being provided the incentive pay as it was reflected in the timekeeping
24 records of Defendants, which is reviewed by Defendants.

25 **4. Mandatory Training Sessions and Tests**

26 76. Bloomin' employs a uniform training system for all employees working at the
27 Restaurants. The system, previously referred to as BBI University, allows Defendants to create,
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1 implement, track, and maintain standards and control.

2 77. The Defendants use the system at all of the Restaurants.

3 78. BBI University's online courses are setup to be accessible from an employee's
4 home and/or personal devices.

5 79. Pursuant to Bloomin's uniform policies, the managers of the Restaurants are
6 responsible for ensuring that the workers complete the necessary BBI University courses online.

7 80. Pursuant to Bloomin's uniform policies, the managers of the Restaurants are
8 responsible for ensuring that the workers complete semiannual tests of the certain guideline and
9 menu items.

10 81. Pursuant to Bloomin's uniform policies, the managers of the Restaurants are
11 responsible for ensuring that the workers complete semiannual tests of the certain guideline and
12 menu items. The tests are mandated and created by Bloomin' to ensure uniformity and knowledge
13 of menu items and promotions.

14 82. Hours worked are tracked and reported from the BBI University online operating
15 system to Bloomin's centralized human resources function and to Defendants.

16 83. Defendants monitor the hours in online training and the courses completed by
17 workers of the Restaurants.

18 84. The hours worked by Plaintiffs and the members of the Class were uniformly
19 manipulated by Bloomin' and the operating Defendants to avoid reporting time worked. Recently,
20 upon information and belief, even though Bloomin' still tracks the hours, Bloomin' stopped
21 displaying the amount of time workers were spending in online training courses in order to shield
22 the specific time from Plaintiffs and the members of the Class. Plaintiffs and the members of the
23 Class were routinely not paid for time worked, including but not limited to overtime.

24 85. Pursuant to Bloomin's uniform policies, the workers are required to spend
25 significant time training at BBI University, studying for mandated written tests and completing
26 written tests, but are not paid for such time.

27 86. Defendants avoided paying overtime to Plaintiffs and the members of the Class for
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1 work performed in excess of forty (40) hours per week by paying them bonuses in the amount of
2 their regular rate of pay, not at a rate of one and one-half (1.5) times their regular rate of pay or
3 minimum wage.

4 87. As a result of the above uniform practices, the timekeeping records of Defendants
5 do not reflect the total time worked by Plaintiffs and the members of the Class.

6 88. The total time worked by Plaintiffs and the members of the Class is substantially
7 understated. Furthermore, the timekeeping records of Defendants do not reflect the fact that
8 Plaintiffs and the members of the Class worked in excess of forty (40) hours per week.

9 89. The failure of the records of Defendants to reflect the correct total time worked by
10 Plaintiffs and the members of the Class and the time in excess of forty (40) hours per week is
11 known by Defendants.

12 90. Attendance and participation in unpaid training programs is (a) not voluntary; (b)
13 directly related to the employees' job; and (c) the employees do not perform any other productive
14 work during such attendance.

15 91. Attendance and participation in studying for and test taking is (a) not voluntary; (b)
16 directly related to the employees' job; and (c) the employees do not perform any other productive
17 work during such attendance.

18 **5. Mandatory Meetings and Events**

19 92. Bloomin' employs a uniform method for managers to conduct periodic staff
20 meetings wherein all employees working at the Restaurants are required to attend.

21 93. Pursuant to Bloomin's uniform policies, employees are unable to clock in to the
22 system which tracks employee hours for such meetings.

23 94. Pursuant to Bloomin's policies employees working at the Restaurants are required
24 to attend and work at marketing events for the company at least one time a year.

25 95. Pursuant to Bloomin's uniform policies, employees are unable to clock in to the
26 system which tracks employee hours for such events, and are specifically informed that they do
27 not receive pay for such events.
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1 96. As a result, the records of the Defendants do not reflect the correct total time
2 worked by Plaintiffs and the members of the Class and the time is known by Defendants.

3 **COLLECTIVE ACTION ALLEGATIONS**

4 97. Plaintiffs bring this action on behalf of the Class as a collective action pursuant to
5 the FLSA, 29 U.S.C. §§ 206, 207, 215(a)(3), and 216(b).

6 98. The Class members Plaintiffs seek to represent include:

7 All current and former non-exempt hourly Outback Steakhouse employees that
8 worked for Defendants in the United States, at any time in the past three years,
9 and to whom Defendants failed to pay the applicable federal minimum wage for
10 all hours worked and/or failed to pay overtime for work performed in excess of
11 forty (40) hours per week based upon Defendants' common policies and/or
12 practices.

13 99. The claims under the FLSA may be pursued by those who opt-in to this case
14 pursuant to 29 U.S.C. § 216(b).

15 100. The members of the Class are so numerous that joinder of all members is
16 impracticable. While the exact number of the members of the Class is unknown to Plaintiffs at this
17 time, and can only be ascertained through appropriate discovery, Plaintiffs believe there are over
18 five thousand individuals in the Class.

19 101. The claims of Plaintiffs are typical of the claims of the Class. Plaintiffs and the
20 members of the Class work or have worked for Defendants at the Restaurants and were subject to
21 the same operational, compensation and timekeeping policies and practices, including not being
22 paid for all hours worked; and have been or are in danger of being retaliated against for seeking
23 the compensation they are owed.

24 102. Common questions of law and fact exist as to the Class which predominate over
25 any questions only affecting them individually and include, but are not limited to, the following:

- 26 i. Whether Plaintiffs and the members of the Class were/are required, suffered, or
27 permitted to: (i) appear and start work ten to fifteen minutes prior to scheduled
28 shifts; (ii) prohibited from clocking in; (iii) required not to clock in for the full
amount of hours they worked and thus were not paid for the hours they worked;

(iv) prohibited from taking mandated, paid and unpaid breaks; (v) prohibited from receiving pay for mandated training; (vi) prohibited from receiving proper pay for training others; and/or (vii) prohibited from receiving pay for mandated company meeting and events;

ii. Whether Defendants failed to pay Plaintiffs and the members of the Class the applicable minimum wage for all hours worked;

iii. Whether Defendants failed to pay Plaintiffs and the members of the Class all overtime compensation due to them for all hours worked in excess of forty (40) hours per week;

iv. Whether Defendants failed to pay Plaintiffs and the members of the Class the proper wages for time spent performing duties unrelated and not incidental to their occupation;

v. The correct statutes of limitations for Plaintiffs' claims and the claims of the members of the Class;

vi. Whether Plaintiffs and the members of the Class are entitled to damages, including but not limited to liquidated damages, and the measure of damages;

vii. Whether Plaintiffs and the members of the Class have been or are in danger of being subjected to retaliation for pursuing their claims; and

viii. Whether Defendants are liable for attorneys' fees and costs.

103. Plaintiffs will fairly and adequately protect the interests of the Class as their interests are aligned with those of the members of the Class. Plaintiffs have no interests adverse to the Class, and Plaintiffs have retained competent counsel who is experienced in class action litigation.

104. The collective action mechanism is superior to the other available methods for a fair and efficient adjudication of the controversy. The damages suffered by individual members of the Class are relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the Class to individually seek redress for the wrongs done to

1 them.

2 105. Plaintiffs and the other members of the Class have suffered and will continue to
3 suffer irreparable damage from the unlawful policies and practices implemented by Defendants.

4 **FIRST CLAIM FOR RELIEF**

5 **Violation of Fair Labor Standards Act, 29 U.S.C. § 201, *et. sec.* (“FLSA”)**

6 **By Plaintiffs and the Collective Class against Defendants**

7 106. Plaintiffs, on behalf of themselves and the Class, repeat and reallege each and every
8 paragraph above as though they were fully set forth at length herein.

9 107. At all relevant times, Defendants have been and continue to be employers engaged
10 in interstate commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

11 108. At all relevant times, Defendants employed, and/or continue to employ, Plaintiffs
12 and each of the Class members within the meaning of the FLSA.

13 109. At all relevant times, Defendants had a uniform policy and practice of willfully
14 refusing to pay employees for all hours worked.

15 110. As a result of Defendants’ willful failure to compensate its employees, including
16 Plaintiffs and the members of the Class, the applicable federal minimum wage for all hours
17 worked, Defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201, *et seq.*

18 111. Defendants’ conduct constitutes a willful violation of the FLSA within the meaning
19 of 29 U.S.C. § 255(a). Because of Defendants’ willful conduct, a three year statute of limitations
20 applies pursuant to 29 U.S.C. § 255(a).

21 112. At all relevant times, Defendants had a uniform policy and practice of willfully
22 refusing to pay employees appropriate overtime compensation for all hours worked in excess of
23 forty (40) hours per work week by Plaintiffs and each of the Class members.

24 113. As a result of Defendants’ willful failure to compensate its employees, including
25 Plaintiffs and the members of the Class, overtime pay for all hours worked at a rate not less than
26 one and one-half (1.5) times the regular rate of pay for work performed in excess of forty (40)
27 hours per work week, Defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§
28

201, *et seq.*

114. Due to Defendants' FLSA violations, Plaintiffs, on behalf of themselves and the members of the Class, are entitled to recover from Defendants: compensation for unpaid wages; an additional equal amount as liquidated damages; and reasonable attorneys' fees, costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and/or on behalf of themselves and all other similarly situated members of the Class request that this Court grant the following relief against Defendants:

A. Designation of this action as a collective action on behalf of the Class, and prompt issuance of notice pursuant to 29 U.S.C. § 216 apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual Consents pursuant to 29 U.S.C. § 216(b);

B. For an order appointing Plaintiffs as the Representatives of the Class and counsel of record as Class Counsel;

C. For an award of compensation for unpaid wages, unpaid compensation for overtime, and unpaid minimum wage to Plaintiffs and the members of the Class;

D. For liquidated damages pursuant to 29 U.S.C. § 216(b);

E. For an award of pre-judgment and post-judgment interest to Plaintiffs and the members of the Class;

F. For an award of costs and expenses of this action together with reasonable attorneys' and expert fees to Plaintiffs and members of the Class; and

G. For such other and further relief as this Court deems just and proper.

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JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues so triable.

DATED this 4th day of October, 2013.

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